



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDCT, DRI-ARI-C, RPP, OLC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- disputing an additional rent increase for capital expenditures;
- an order that the landlord return the tenant's personal property;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement;
- and
- to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing I alerted the parties to the Rules of Procedure which specify that multiple applications contained in a single application must be related.

During the course of the hearing, I learned that the landlord was successful in obtaining an order of possession previously, which has been served to the tenant. The tenant advised that the tenant is in the process of moving and agrees that the application for an order cancelling the notice to end the tenancy should be dismissed.

The landlord agreed to return the tenant's personal property, and I so order.

Since the tenancy is ending, I dismiss the tenant's application for an order that the landlord comply with the *Act* or the tenancy agreement.

The only rent increase has not yet taken effect, and since the tenancy is ending, I dismiss that portion of the application.

### Issue(s) to be Decided

The issue remaining to be decided is:

- has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for overpayment of utilities?

### Background and Evidence

**The tenant** testified that this month-to-month tenancy began on April 20, 2022. Rent in the amount of \$2,200.00 is payable on the 1<sup>st</sup> day of each month, however on April 7, 2022 the landlord said that the tenant only had to pay \$1,900.00, and the tenant paid a pro-rated amount for the first partial month of the tenancy. There are no rental arrears, and a copy of the tenancy agreement has been provided for this hearing. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,100.00 as well as a pet damage deposit in the amount of \$1,100.00. The rental unit is the upper part of a house; the landlord did not live on the property during the tenancy.

The tenant further testified that the City utilities, water, sewer and garbage pickup are in the landlord's name. The hydro is in the tenant's name. The tenancy agreement provides that the tenant is responsible for 60% of the heat, water and electricity costs. The tenant has been paying 100% of the bills and claims 40% back from the landlord. A copy of a spreadsheet has been provided for this hearing showing the amounts that the tenant paid from June, 2022 to December 12, 2023, and the tenant claims \$1,445.62 for the hydro and \$653.53 for the City utilities. Also provided is a bill and payment history from BC Hydro. The tenant also claims an estimated \$245.20 for the next hydro bill which is 40% of the bill that will run from December 9, 2023 to February 8, 2024, and an estimate from BC Hydro has also been provided. The landlord had tradespeople in the house, using electricity. The tenant mentioned it to the landlord several times, and the tenant did not use hydro in the lower level.

**The landlord** testified that until November, 2023 the only utilities in the lower level area were there for the tenant's 2 freezers in the space, and some kids stayed there for a few weeks. The tenant didn't agree in writing to the increase from 60% to 40%, but agreed by paying the bills.

### Analysis

Where a party makes a monetary claim for damage or loss as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the parties have provided a copy of a tenancy agreement which specifies that the tenant pays 60% of the bills. A landlord cannot unilaterally require the tenant to pay 100% of the bills unless the tenant has agreed in writing.

I accept the spreadsheet provided by the tenant and I find that the tenant has established a claim of \$1,445.62 for the hydro bills and \$653.53 for the City utilities, for a total of \$2,099.15. I further order that the landlord may not make a claim for any more than 60% of the next hydro bill that will run from December 9, 2023 to the end of the tenancy.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the tenant as against the landlord in the amount of \$2,199.15. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

### Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end the tenancy for unpaid rent or utilities is hereby dismissed without leave to reapply.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

By consent, I hereby order that the landlord return the tenant's personal belongings.

The tenant's application disputing a rent increase is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,199.15.

This order is final and binding and may be enforced.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 31, 2024

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Residential Tenancy Branch